

Chapter 4: Section 904 Offenses

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Appendix: Chart—Criminal Penalties, Licensing Sanctions, and Vehicle Sanctions Under Vehicle Code §904

This chapter lists the elements of the various criminal offenses created by Vehicle Code §904. Following the discussion of the elements of each offense, the applicable criminal penalties, licensing sanctions, and vehicle sanctions are addressed. A chart summarizing the information presented in this chapter appears in the Appendix.

Notes: Attempted violations of law must be treated as completed offenses for purposes of imposing licensing and vehicle sanctions under the Vehicle Code. Attempted violations of the Vehicle Code or a substantially corresponding local ordinance must be treated as completed offenses for purposes of imposing criminal penalties. See MCL 257.204b, discussed at Sections 1.2(B) and 7.1 of this volume.

Vehicle Code §904 does not apply to a person who operates a vehicle solely for the purposes of protecting human life or property if the life or property is endangered and summoning prompt aid is essential. MCL 257.904(15).

4.1 Driving While One's License Is Suspended or Revoked — §904(1) and (2)

MCL 257.904 governs the offense of driving while one's license is suspended or revoked. Subsections (1) and (2) of this statute sanction drivers who commit this offense and vehicle owners who permit others to drive with a suspended or revoked license. The same penalties and sanctions apply to each offense.

*Vehicle Code §212 governs the method by which notice must be given.

A. Driving While One's License Is Suspended or Revoked

The elements of this offense are set forth in MCL 257.904(1) as follows:

1. The defendant was subject to one of the following restrictions:

- a. The defendant's operator's or chauffeur's license or registration certificate was suspended or revoked, and the defendant had been notified of this in accordance with MCL 257.212;*
- b. The defendant's application for a license was denied; or
- c. The defendant never applied for a license.

For purposes of §904, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again. MCL 257.904(19).

2. The defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

See Section 1.3 of this volume for definitions of "motor vehicle," "generally accessible to motor vehicles," and "operate."

B. Allowing Another Person to Drive While His or Her License Is Suspended or Revoked

The elements of this offense are set forth in MCL 257.904(2) as follows:

1. The owner of a vehicle knowingly permitted another person to operate a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

See Section 1.3 of this volume for definitions of "motor vehicle," "generally accessible to motor vehicles," and "operate."

2. The person operating the vehicle was subject to one of the following restrictions:

- a. The person's license or registration certificate was suspended or revoked;
- b. The person's application for a license was denied; or
- c. The person never applied for a license.

For purposes of §904, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again. MCL 257.904(19).

C. Penalties

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating §904(1) and (2).

1. Criminal Penalties

Criminal penalties for persons convicted of violating §904(1) and (2) are as follows:

- **First-time offenders** are subject to up to 93 days' imprisonment and/or a maximum \$500.00 fine. MCL 257.904(3)(a).
- **If the violation occurs after a prior conviction**, the offender is subject to imprisonment for not more than one year or a fine of not more than \$1,000.00, or both. MCL 257.904(3)(b).^{*} This penalty does not increase with the number of prior convictions on the driver's record.

^{*}Note that §904 contains no definition of "prior conviction" for purposes of its subsection (3).

2. License Sanctions

A person who violates §904(1)–(2) is subject to the following licensing sanctions, regardless of whether the violation is a first-time or repeat offense:

- If the violation occurs during a suspension of definite length or if the violation occurs before the person is approved for a license following revocation, the Secretary of State shall immediately impose an additional like period of suspension or revocation. MCL 257.904(10).
- If the violation occurs while the license is indefinitely suspended or after denial of an application for a license, the Secretary of State shall immediately impose a 30-day suspension or denial. MCL 257.904(11).
- Upon receiving a record of the conviction, bond forfeiture, or a civil infraction determination of a person for unlawful operation of a commercial motor vehicle while the vehicle group designation is suspended or revoked under MCL 257.319b^{*}, or when the person is operating a commercial vehicle while disqualified under the Commercial Motor Vehicle Safety Act of 1986, 49 USC 31301 et seq. (containing federal criminal penalties for operating a commercial carrier under the influence of drugs or alcohol), the Secretary of State shall immediately impose an additional like period of suspension or revocation. This provision applies only if

^{*}Section 319b contains general provisions on suspension or revocation of commercial vehicle licenses.

the violation occurs during a suspension of definite length or before the person is approved for a license following a revocation. MCL 257.904(12).

If the Secretary of State receives records of more than one conviction or civil infraction determination resulting from the same incident, all of the convictions or civil infraction determinations shall be treated as a single violation for purposes of imposing an additional period of suspension or revocation under the foregoing provisions. MCL 257.904(13).

Periods of suspension or revocation imposed under MCL 257.904(10)–(12) do not apply to persons who have only one currently effective suspension or denial on their driving records under MCL 257.321a* and were convicted of or received a civil infraction determination for a violation that occurred during that suspension or denial. This exemption may only be applied once during a person's lifetime. MCL 257.904(18).

Upon posting of an abstract of conviction for violation of §904(1) or (2), the Secretary of State shall assess a \$500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(iii). See Section 6.4(B) of this volume for more information about driver responsibility fees.

*Vehicle Code §321a concerns failures to answer a citation or notice to appear in court and failures to comply with a court order or judgment. See Section 2.14 of this volume for more information.

3. Vehicle Sanctions

Cancellation of Registration Plates — The Secretary of State shall cancel a vehicle's registration plate upon receipt of notice from a police officer that the driver has committed a first or second violation of Vehicle Code §904(1) or (2). MCL 257.904(3). This sanction is subject to the following exceptions:

- For a first violation, the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle.
- For a violation occurring after a prior conviction, the vehicle was stolen.

Immobilization/Impoundment — The Vehicle Code makes no provision for immobilization or forfeiture for first-time violations under §904(1)–(2). See MCL 257.904(17). However, first offenders may be subject to vehicle impoundment for up to 120 days from the date of judgment under MCL 257.904b(2).

Offenders with a second or subsequent suspension, denial, or revocation under §904(10), (11), or (12) within seven years receive the following vehicle sanctions:

- **Second suspension, revocation, or denial within seven years:** Immobilization for a maximum of 180 days, in the court's discretion. MCL 257.904d(2)(a). The court may also order

impoundment for up to 120 days from the date of judgment under MCL 257.904b(2).

- **Third or fourth suspension, revocation, or denial within seven years:** Mandatory immobilization for 90 to 180 days. MCL 257.904d(2)(c).
- **Fifth (or subsequent) suspension, revocation, or denial within seven years:** Mandatory immobilization for no less than one and no more than three years. MCL 257.904d(2)(d).

Registration Denial — In addition to the foregoing vehicle sanctions, offenders who have a fourth or subsequent suspension or revocation under Vehicle Code §904 are subject to mandatory vehicle registration denial under MCL 257.219(1)(d).

4.2 Driving While License Suspended or Revoked Causing Death — §904(4)

A. Elements of the Offense

The elements of this offense are set forth in MCL 257.904(4) as follows:

1. The defendant was subject to one of the following restrictions:

- a. The defendant's operator's or chauffeur's license or registration certificate was suspended or revoked, and the defendant had been notified of this in accordance with MCL 257.212;*

Section 904(4) does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to MCL 257.321a.

- b. The defendant's application for a license was denied; or
- c. The defendant never applied for a license.

For purposes of §904, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again. MCL 257.904(19).

2. The defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

See Section 1.3 of this volume for definitions of "motor vehicle," "generally accessible to motor vehicles," and "operate."

*Vehicle Code §212 governs the method by which notice must be given.

3. By operation of the motor vehicle, the defendant caused the death of another person.

Applying the analysis used in *People v Lardie*, 452 Mich 231, 259–260 (1996), for §625(4) offenses, the Michigan Court of Appeals held that MCL 257.904(4) requires a causal link between the victim’s death and the defendant’s suspended license. *People v Schut*, 265 Mich App 446, 452 (2005).

In *Schut*, the victim was killed when she collided with the defendant’s truck as she crossed the road in front of the defendant’s vehicle on a snowmobile. The defendant argued that the statutory language of MCL 257.904(4) required more than his “mere involvement” in the victim’s death. According to the defendant, the statute applied only if his operation of the truck without a valid license constituted the actual cause of the victim’s death. Citing *Lardie, supra*, the *Schut* Court agreed with the defendant:

“In *Lardie*, our Supreme Court ruled that identical language found in MCL 257.625(4), operation of a motor vehicle while intoxicated causing death, required proof of causation, i.e., the prosecutor must establish that the particular defendant’s decision to drive while intoxicated produced a change in that driver’s operation of the vehicle that caused the death. An unavoidable killing is insufficient to justify an invocation of the statute. . . .

* * *

“Binding authority interprets MCL 257.625(4) as requiring a causal link between the intoxication and the death, thus, we interpret MCL 257.904(4) as requiring a causal link between the suspended license and the death. To find otherwise would mean the statute would impose a penalty on a driver even when his wrongful decision to drive with a suspended license had no bearing on the death that resulted.” *Schut, supra* at 450, 452.

B. Penalties and Sanctions

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating §904(4).

1. Criminal Penalties

First-time and repeat offenders are all subject to a maximum 15 years’ imprisonment and/or a fine of not less than \$2,500.00 or more than \$10,000.00. MCL 257.904(4).

A person may be charged with and convicted of MCL 257.904(4) for each death arising out of the same criminal transaction, and the court may order the

terms of imprisonment to be served consecutively to each other. MCL 769.36(1)(a).

2. Licensing Sanctions

License Revocation: Upon receipt of the offender's record of conviction under §904(4) or another state's law that substantially corresponds to §904(4), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least one year. MCL 257.303(5)(d), (7)(a)(i). The period of revocation is increased to five years if imposed within seven years after the date of a prior license revocation or denial. MCL 257.303(7)(a)(ii).*

*For statutory provisions governing multiple convictions, see Section 6.4(D) of this volume.

Points: The Secretary of State will assess six points for a violation of §904(4). MCL 257.320a(1)(a).

Driver Responsibility Fee: Upon posting of an abstract of conviction for violation of §904(4), the Secretary of State shall assess a \$500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(iii). See Section 6.4(B) of this volume for more information about driver responsibility fees.

3. Vehicle Sanctions

MCL 257.904(6) gives the court discretion to order vehicle forfeiture for persons convicted of violating §904(4). If the court does not order forfeiture, it must order immobilization, as follows:

- For a first offense, or for a conviction occurring after one prior suspension, revocation, or denial under §904(10)–(12), not more than 180 days. MCL 257.904d(2)(b).
- For a conviction occurring after two or three prior suspensions, revocations, or denials under §904(10)–(12) within seven years, not less than 90 days or more than 180 days. MCL 257.904d(2)(c).
- For a conviction occurring after four or more prior suspensions, revocations, or denials under §904(10)–(12) within seven years, not less than one year or more than three years. MCL 257.904d(2)(d).

In addition to the foregoing vehicle sanctions, offenders who have a fourth or subsequent suspension or revocation under Vehicle Code §904 are subject to mandatory vehicle registration denial under MCL 257.219(1)(d).

4.3 Driving While License Suspended or Revoked Causing Serious Impairment of a Body Function — §904(5)

A. Elements of the Offense

The elements of this offense are set forth in MCL 257.904(5) as follows:

1. The defendant was subject to one of the following restrictions:

a. The defendant's operator's or chauffeur's license or registration certificate was suspended or revoked, and the defendant had been notified of this in accordance with MCL 257.212.*

Section 904(5) does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to MCL 257.321a.

b. The defendant's application for a license was denied; or

c. The defendant never applied for a license.

For purposes of §904, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again. MCL 257.904(19).

2. The defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

See Section 1.3 of this volume for definitions of "motor vehicle," "generally accessible to motor vehicles," and "operate."

3. By operation of the motor vehicle, the defendant caused another person to suffer serious impairment of a body function.

"Serious impairment of a body function" is defined in MCL 257.904(5) as follows:

“'[S]erious impairment of a body function' includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

*Vehicle Code §212 governs the method by which notice must be given.

- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.”

See Section 4.2(A), above, for discussion of causation.

B. Penalties and Sanctions

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating §904(5).

1. Criminal Penalties

First-time and repeat offenders are all subject to a maximum five years' imprisonment and/or a fine of not less than \$1,000.00 or more than \$5,000.00. MCL 257.904(5).

2. Licensing Sanctions

License Revocation: Upon receipt of the offender's record of conviction under §904(5) or another state's law that substantially corresponds to §904(5), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least one year. MCL 257.303(5)(d), (7)(a)(i). The period of revocation is increased to five years if imposed within seven years after the date of a prior license revocation or denial. MCL 257.303(7)(a)(ii).*

Points: The Secretary of State will assess six points for a violation of §904(5). MCL 257.320a(1)(a).

Driver Responsibility Fee: Upon posting of an abstract of conviction for violation of §904(5), the Secretary of State shall assess a \$500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(iii). See Section 6.4(B) of this volume for more information about driver responsibility fees.

*For statutory provisions governing multiple convictions, see Section 6.4(D) of this volume.

3. Vehicle Sanctions

MCL 257.904(6) gives the court discretion to order vehicle forfeiture for persons convicted of violating §904(5). If the court does not order forfeiture, it must order immobilization, as follows:

- For a first offense, or for a conviction occurring after one prior suspension, revocation, or denial under §904(10)–(12), not more than 180 days. MCL 257.904d(2)(b).
- For a conviction occurring after two or three prior suspensions, revocations, or denials under §904(10)–(12) within seven years, not less than 90 days or more than 180 days. MCL 257.904d(2)(c).
- For a conviction occurring after four or more prior suspensions, revocations, or denials under §904(10)–(12) within seven years, not less than one year or more than three years. MCL 257.904d(2)(d).

In addition to the foregoing vehicle sanctions, offenders who have a fourth or subsequent suspension or revocation under Vehicle Code §904 are subject to mandatory vehicle registration denial under MCL 257.219(1)(d).

4.4 **Allowing a Suspended/Revoked Driver to Operate Causing Death or Serious Impairment of a Body Function — §904(7)**

A. Elements of the Offenses

MCL 257.904(7) sets forth the elements of these offenses as follows:

- 1. The defendant was the owner of a motor vehicle.**
- 2. The defendant knowingly permitted another person to operate the motor vehicle on a Michigan highway, other place open to the general public, or a place generally accessible to motor vehicles, including an area designated for parking.**

See Section 1.3 of this volume for definitions of “operate,” and “generally accessible to motor vehicles.”

3. The operator of the vehicle:

- a.** Had a suspended or revoked license or registration certificate;
- b.** Was denied a license; or
- c.** Was never licensed.

For purposes of §904, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again. MCL 257.904(19).

4. By operating the vehicle, the operator caused another person death or serious impairment of a body function.

“Serious impairment of a body function” is defined in MCL 257.904(5) as follows:

“‘[S]erious impairment of a body function’ includes, but is not limited to, 1 or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.”

See Section 4.2(A), above, for discussion of causation.

B. Penalties and Sanctions

1. Criminal Penalties

MCL 257.904(7) provides for felony penalties as follows:

- If the operator of the vehicle caused the **death** of another person, the defendant is subject to not more than five years’ imprisonment and/or a fine of not less than \$1,000.00 or more than \$5,000.00.
- If the operator of the vehicle caused another person to suffer **serious impairment of a body function**, the defendant is subject to not more than two years’ imprisonment and/or a fine of not less than \$1,000.00 or more than \$5,000.00.

The statute contains no provision for progressive criminal penalties in cases of repeat offenses.

2. Licensing Sanctions

Driver Responsibility Fee: Upon posting of an abstract of conviction for violation of §904(7), the Secretary of State shall assess a \$500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(iii). See Section 6.4(B) of this volume for more information about driver responsibility fees.

4.5 Moving Violations Committed During a Period of Suspension/Revocation

Those who unlawfully operate a vehicle or commit a moving violation while driving with a suspended/revoked license are subject to mandatory additional periods of license suspension or revocation under §904(10)–(12), as follows:*

- If the violation occurs during a suspension of definite length or if the violation occurs before the person is approved for a license following revocation, the Secretary of State shall immediately impose an additional like period of suspension or revocation. MCL 257.904(10).
- If the violation occurs while the license is indefinitely suspended or after denial of an application for a license, the Secretary of State shall immediately impose a 30-day suspension or denial. MCL 257.904(11).

Upon receiving a record of the conviction, bond forfeiture, or a civil infraction determination of a person for unlawful operation of a commercial motor vehicle while the vehicle group designation is suspended or revoked under MCL 257.319b*, or when the person is operating a commercial vehicle while disqualified under the Commercial Motor Vehicle Safety Act of 1986, 49 USC 31301 et seq. (containing federal criminal penalties for operating a commercial carrier under the influence of drugs or alcohol), the Secretary of State shall immediately impose an additional like period of suspension or revocation. This provision applies only if the violation occurs during a suspension of definite length or before the person is approved for a license following a revocation. MCL 257.904(12).

An offense occurring during a first-time suspension for failing to appear in court or failing to comply with a judgment under MCL 257.321a will not count as a prior offense for purposes of enhancement under §904(10)–(12). This exemption for an FAC/FCJ suspension violation applies only once during a person's lifetime; if there is a subsequent FAC/FCJ suspension violation, both it and the first violation are counted for purposes of enhancement. MCL 257.904(18).

*See Section 2.11 of this volume for information on vehicle sanctions imposed on such drivers.

*Section 319b contains general provisions on suspension or revocation of commercial vehicle licenses.